

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - :

23 Cr. 10 (AS)

AVRAHAM EISENBERG, :

Defendant. :

----- x

PROPOSED EXAMINATION OF PROSPECTIVE JURORS

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The Government respectfully requests, pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure, that the Court include the following questions in its examination of prospective jurors. The Court is requested to pursue more detailed questioning at the sidebar if a prospective juror's answer reveals that further inquiry is appropriate and, in such an instance, to conclude with an inquiry as to whether the particular fact or circumstance would influence the prospective juror in favor of or against either the Government or the defendant.

A. Statement of the Case

1. This is a criminal case against Avraham Eisenberg, the defendant. Mr. Eisenberg has been charged with committing federal crimes in an indictment returned by a grand jury sitting in this District. You will hear a lot more about these charges in the coming days, but let me provide you with a brief summary of the allegations in this case in order to help determine whether there is anything about the case that may make it difficult or inappropriate for you to serve on the jury.

2. The Indictment alleges that the defendant carried out a scheme to fraudulently steal approximately \$110 million worth of cryptocurrency from a cryptocurrency exchange called Mango Markets and its customers.

3. For this conduct, the defendant has been charged in the indictment with three separate charges, or “counts,” charging that the defendant violated the federal laws that make it unlawful to commit commodities fraud, swap manipulation, and wire fraud.

4. The defendant denies the charges and has entered a plea of not guilty.

5. We are about to select from among you the jurors who will sit in this case. Both sides are entitled to know something about the people who sit as jurors. The law provides this procedure to ensure that both the Government and the defendant receive the fairest possible trial. For this reason, I am going to ask you certain questions. It is vital that you provide truthful answers to these questions. They are not meant to embarrass you in any way, but only to elicit the basic information necessary to permit the parties and the Court to make an informed choice of jurors for the case.

6. Do any of you know anything about the facts of this case, other than what I have told you?

7. Have any of you heard, read, or seen anything that for any reason would prevent you from rendering a fair and impartial judgment in this case?

8. Let me now ask you a few questions relating to the Government’s regulation of the cryptocurrency markets:

9. Do any of you believe that cryptocurrency markets should not be regulated by the federal government?

10. Do any of you believe that buying or selling commodities with the fraudulent intention to move the price of swaps, otherwise known as commodities fraud or swap manipulation, should not be illegal?

11. Do any of you feel that the laws against market manipulation should not be enforced criminally by the federal government?

12. Does the fact that the charges involve the cryptocurrency markets or market manipulation alleged to have been committed in connection with the cryptocurrency markets make it difficult for any of you to render a fair verdict?

13. Do you follow the news about fraud, market manipulation, or alleged misconduct by individuals in cryptocurrency or finance industry? If so, will anything that you have read or seen affect your ability to be fair and impartial in this case?

B. Knowledge of the Trial Participants

14. Do any of you know, or have you had any dealings, directly or indirectly, with the defendant, or with any of his relatives, friends or associates?

15. To your knowledge, do any of your relatives, friends, associates, or employers know the defendant?

16. The defendant is represented by Sanford Talkin, Brian Klein, Ashley Martabano, Noam Greenspan, and Riley Smith of the law firms Talkin, Muccigrosso & Roberts, LLP and Waymaker LLP. [*Please ask counsel to stand.*] Do any of you know these attorneys? Have you or your family members or close friends had any dealings either directly or indirectly with either of these lawyers or the law firms Talkin, Muccigrosso & Roberts, LLP and Waymaker LLP?

17. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, who, for purposes of this matter, is Damian Williams. The conduct of the trial will be in the immediate charge of Assistant United States Attorneys Thomas Burnett, Peter Davis, and Tian Huang. *[Please ask the Government attorneys to stand.]* Do any of you know Mr. Burnett, Mr. Davis, or Ms. Huang? Have you or your family members or close friends had any dealings either directly or indirectly with them? The Government attorneys will also be assisted in this case by Special Agent Brandon Racz of the FBI, and Jon Oshinsky and Ryan Sears, paralegal specialists in the United States Attorney's Office. *[Please ask Special Agent Racz, Mr. Oshinsky and Mr. Sears to stand.]* Have you or your family members or close friends had any dealings either directly or indirectly with Special Agent Racz, Mr. Oshinsky, or Mr. Sears?

C. Names and Places

18. I will now read a list of names of individuals and businesses whose names may be mentioned during the trial, or who may be witnesses in this case *[To be provided in advance of trial]*:

Are any of you familiar with any of these people, entities, or places apart from simply being a customer of one of the entities?

D. Questions Specific to the Case; Relationship with Government and Others

19. Have any of you, or your family members or close friends, ever worked in the cryptocurrency or commodities industry?

20. Have you or anyone close to you ever been employed by a financial institution that traded cryptocurrency products or swaps?

21. Have any of you, or your family members or close friends, ever worked for the United States Commodities Futures Trading Commission (“CFTC”), the United States Securities and Exchange Commission (“SEC”), or other financial regulatory body?

22. Do any of you know, or have any association – professional, business, or social, direct or indirect – with any member of the staff of the United States Attorney’s Office for the Southern District of New York or the FBI?

23. Are you, or is any member of your family or a close friend, employed by any law enforcement agency, whether federal, state, or local?

24. Have you, or any member of your family or a close friend, ever been employed by any law enforcement agency?

25. Have you, either through any experience you have had or anything you have seen or read, developed any bias, prejudice or other feelings for or against the United States Attorney’s Office? For or against the FBI? For or against the CFTC? For or against the SEC? For or against any other law enforcement agency?

26. This case involves alleged criminal market manipulation and criminal wire fraud. This is not a civil proceeding. Is there anything about this type of case – that is, a criminal market manipulation and fraud case – that would make you hesitate to sit on this jury?

27. Have you, or has any member of your family or a close friend, either as an individual or in the course of business, ever been a party to any legal action or dispute with the United States, or with any of the officers, departments, agencies, or employees of the United States, including the CFTC and SEC?

28. Have you or any member of your family or any close friend ever had any education or training, applied or worked for, or volunteered in, any area of criminal defense, such as a public defender office, a law office, or a private investigation firm? If yes, please describe the training, job and the type of office and, if other than yourself, state the person's relationship to you.

E. Prior Experience with the Court System

29. Are you, or any of your family members or close friends, attorneys or employees of a law firm?

30. For the next series of questions, the terms "governmental agency" and "licensing authority" should be understood to include, among all other governmental agencies and licensing authorities, the CFTC and SEC.

31. Have any of you, or any of your relatives or close friends, ever been involved or appeared as a witness in any investigation by a federal or state grand jury, or by a legislative committee, governmental agency, or licensing authority?

32. Have you, or any of your relatives or close friends, ever been questioned in any matter by a federal, state, or local law enforcement agency?

33. Have you, or any of your relatives or close friends, ever been a witness or a complainant in any federal, state, or local prosecution?

34. Are you, or any of your relatives or close friends, now under subpoena or, to your knowledge, about to be subpoenaed, in any criminal case?

35. Have you, or have any of your relatives, associates or close friends, ever been charged with a crime? What crime? [*As to any prospective juror who answers*

affirmatively, the Court is respectfully requested to inquire, at the bench, into the circumstances of the charges.]

36. Have you, or have any of your relatives, associates or close friends ever been the subject of any investigation or accusation by any federal or state grand jury, or by any legislative committee or other governmental agency? *[As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench, into the circumstances of the investigation.]*

37. Have you, or any of your relatives or close friends, ever been a victim of a crime? *[As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench, into the circumstances of each crime.]*

38. Have you, or any of your relatives or close friends, had any experience with law enforcement that you think may affect your ability to render a fair verdict? *[As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire, at the bench, into the circumstances of each incident and that prospective juror's reaction to how he or she was treated by the law enforcement agents.]*

F. Prior Jury Service

39. Have you ever, at any time, served as a member of a grand jury, whether in federal, state, county or city court? If so, when and where did you serve?

40. Have you ever served as a juror in any court? If so, when, and in what court did you serve, and was it a civil or criminal case? What was the nature of the case? Without saying what it was, did the jury reach a verdict?

G. Law Enforcement Witnesses

41. The Government witnesses in this case may include law enforcement officers – specifically, agents from the FBI. Would any of you be more likely to believe a witness merely because he or she is a member of a law enforcement agency? Would any of you be less likely to believe a witness merely because he or she is member of a law enforcement agency?

42. Does anyone have any personal feelings or experiences concerning law enforcement witnesses, or FBI agents in particular, that would in any way affect their ability to be fair and impartial in this case?

H. Expert Witnesses

43. You also may hear testimony from expert witnesses. Have any of you had any experiences with experts, or do you have any general feelings about the use of experts, that would make it difficult for you to render a wholly fair and impartial verdict?

I. Investigative Techniques

44. Does anyone have any expectations about the types of evidence that the Government will present in this criminal trial, or in a criminal trial more generally?

45. Would any of you be unable to follow the Court's instructions that the Government is not required to use any particular technique in order to investigate evidence of a crime?

K. Persons not on Trial

46. You might hear evidence in this trial of criminal activity committed by people other than the defendant. Those other individuals are not on trial here. You may not draw

any inference, favorable or unfavorable, towards the Government or the defendant from that fact. You also may not speculate as to the reason why other persons are not on trial. Is there any juror who cannot follow this instruction or who for this reason would have difficulty rendering a fair and impartial verdict?

K. Other Questions

47. Do any of you have problems with your hearing or vision which would prevent you from giving full attention to all of the evidence at this trial?

48. Are any of you taking any medication, or do any of you have any medical condition, that would prevent you from giving full attention to all of the evidence at this trial?

49. Do any of you have any difficulty in reading or understanding English in any degree?

50. Do any of you have any religious, philosophical or other beliefs that would make you unable to render a guilty verdict for reasons unrelated to the law and the evidence?

L. Function of the Court and Jury

51. The function of the jury is to decide questions of fact. You are the sole judge of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact-finder. When it comes to the law, however, you are to take your instructions from the Court, and you are bound by those instructions. You may not substitute your own notions of what the law is, or what you think it should be. At the conclusion of the case, your job will be to determine whether or not the defendant is guilty as charged in the indictment. Do any of you have any bias or prejudice or belief that might prevent you from accepting the instructions of law that I will give you in this case?

52. Will each of you accept the proposition that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into your deliberations as to whether the defendant is guilty or not guilty?

53. Will each of you accept the proposition of law that sympathy or empathy must not enter into the deliberations of the jurors as to whether the defendant is guilty or not on each count, and that only the evidence produced here in court may be used by you to answer the question of guilt on each count?

54. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Do any of you feel that even if the evidence established a defendant's guilt beyond a reasonable doubt, you might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

M. Other Biases

55. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, do any of you have the slightest doubt in your mind, for any reason whatsoever, that you will be able to serve conscientiously, fairly and impartially in this case, and to render a true and just verdict without fear, favor, sympathy, bias, or prejudice – and according to the law as it will be explained to you?

N. Juror's Background

56. The Parties respectfully request that the Court ask each juror to state the following information:

- a. the juror's age;

- b. the area in which the juror resides, and any other areas in which the juror has resided during the last 10 years;
- c. the members of the juror's household;
- d. the juror's educational background, including the highest degree obtained;
- e. the juror's occupation;
- f. the name and location of the juror's employer;
- g. the same information concerning any other employment within the last 10 years;
- h. the same information with respect to the juror's spouse and any working children;
- i. whether the juror has served in the military;
- j. the names of any clubs or associations of which the juror is a member;
- k. the names of any publications, print or online (including blogs), to which the juror subscribes and/or contributes;
- l. which newspapers and magazines the juror regularly reads;
- m. which television programs the juror regularly watches; and
- n. the juror's hobbies and leisure-time activities and organizations.

O. Requested Instruction Following Impaneling of the Jury

57. From this point until the time when you retire to deliberate your verdict, it is your duty not to discuss this case, and not to remain in the presence of other persons who may be discussing this case. The rule about not discussing the case with others includes discussions even with members of your own family and your friends.

58. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me through my deputy clerk. In this regard, let me explain to you that the attorneys and the defendants in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly and consistent with my instructions to them by doing so.

Dated: New York, New York
March 20, 2024

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/
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